IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 754 of 2001
in
SPECIAL CIVIL APPLICATION No 5031 of 1997
with
CIVIL APPLICATION No 6702 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE RAVI R.TRIPATHI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KUTCH DISTRICT PANCHAYAT
Versus
JA POLLARA

Appearance:
1. LETTERS PATENT APPEAL No. 754 of 2001
MR HS MUNSHAW for Appellant No.
MR IS SUPEHIA for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 30/09/2003

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

#. The respondent-petitioner filed Special Civil Application No.5031/97 and prayed that the respondent (present appellant) be directed to treat him as under suspension from 6.3.1980 to 31.10.1997 and to pay him the subsistence allowance at Rs.1 p.m. and further to treat him as on duty for the purpose of retiral benefits, pension, gratuity etc. and to fix and pay the same with effect from 1.11.1997 onwards. Alternatively, it is prayed that if prayer (A) is not granted petitioner-respondent be directed to pay to the petitioner the subsistence allowance at the normal rates 50% or 75% from from 5.12.1983 till further orders are passed by the competent authority as regards suspension.

#. From the judgment and order dated 19.12.2000 passed by the learned Single Judge (Coram : S.K.Keshote, J.) delivered in Special Civil Application No.5031/97 it clearly appears that learned counsel Mr.Supehia for the petitioner had given up the claim of the petitioner for pension and other retirementary benefits and only prayer pressed into service was for giving subsistence allowance from the date on which he was placed on suspension till the date he attained the age of superannuation to the petitioner. The learned Single Judge while partly allowing the writ petition on 19.12.2000 clearly observed in para 9 as under :-

"Last but not least, otherwise also, in case where this prayer for grant of retirementary benefits would have been passed, this court in the facts of this case could have declined the same. An employee who has been convicted and punished for offence involved morel turpitude cannot be given all these benefits under article 226 of the Constitution even in a case where the department would have dismissed him from service in a case where it would have been challenged. This prayer made if granted, will result in conferring all service benefits to an employee who has misappropriated the public money. This extra ordinary equitable jurisdiction of this court is not meant to give these benefits to such an employee. This remedy is meant for honest employees and not for those who made

misappropriation of the public money"

#. However, learned Single Judge accepted the writ petition filed by the original petitioner regarding subsistence allowance during the suspension period from 6.3.80 till the date of his superannuation i.e. 31.10.1997 and accordingly, the learned Single Judge ordered to pay subsistence allowance under rules. This has been challenged in this Letters Patent Appeal by the appellant-Kutch District Panchayat and others.

#. Learned counsel Mr.Munshaw for the appellant vehemently submitted that the learned Single Judge committed grave error in partly allowing the petition and granting subsistence allowance to the respondent-petitioner. He submitted that the respondent-petitioner waited till the date of his superannuation in 1997 and approached this court for the first time in June, 1997 by way of writ petition with a prayer to grant him subsistence allowance from 6.8.1980 to 31.10.97. It was a belated challenge, therefore, only on this ground learned Single Judge ought to have dismissed the petition. He submitted that the respondent-original petitioner was convicted by the competent criminal court for serious offences like Section 409 of IPC and sentenced him to suffer six months R.I. and to pay fine of Rs.1,000/=. The said order of conviction was confirmed in appeal by the Sessions Court. The sentence was reduced till rising of the court by maintaining the order of fine. Revision filed accusant that order was dismissed by this court. Thus, the respondent-petitioner was not entitled for any subsistence allowance. In fact, he is to be treated as dismissed from service.

#. As against that learned counsel Mr.Supehia for the respondent-petitioner vehemently submitted that the learned Single Judge rightly accepted the writ petition regarding subsistence allowance. He submitted that under the rules it was the duty of the present appellant to give him subsistence allowance, which was not paid to him for a period of 17 years, therefore, it being a bonafide cause, the petitioner approached this Hon'ble Court and when the learned Single Judge of this court exercised his extra-ordinary writ jurisdiction in favour of the respondent-petitioner then, this court should not interfere with such orders in Letters Patent Appeal.

#. Before appreciating the rival contentions raised by learned counsel for the parties, we would like to narrate few relevant and important facts, which are as under.

#. The respondent-petitioner was born on 20.10.1939. He was appointed as primary school teacher on 14.7.1958 by Special Officer, Education, Kutch. Later on he opted for employment in District Panchayat and accordingly he was appointed as Assistant Teacher in Kutch on 14.7.1968 by the District Primary Education Officer, Kutch. He was working as Head Master in Mandvi School with effect from 1.1.1973. A complaint was filed by Assistant Teacher, Mrs.Ranjanben B. Thakker to the effect that she was not paid an amount of Rs.400/= towards her arrears in salary. Preliminary inquiry was held against the petitioner and the petitioner was found guilty. The District Education Inspector (Administration) filed complaint before the police on 19.8.1977, which was registered as Criminal Case No.34 of 1979 for the offence punishable under Section 409 of IPC. On the conclusion of Trial, he was found guilty by the learned Magistrate and sentenced to suffer 6 months imprisonment and to pay fine of Rs.1,000/= for committing breach of trust and misappropriating Rs.400/=. Criminal Appeal No.41 of 1979 was filed by the petitioner against the order of conviction and sentence, which was modified by the learned Asst. Sessions Judge, Kutch-Bhuj. The conviction was confirmed, but the sentence was reduced till rising of the court by maintaining order of fine of Rs.1,000/= by order dated 25.2.1980. Criminal Revision Application filed against the order of conviction and sentence recorded by the courts below was dismissed by this court.

#. In view of the above, the respondent-petitioner was required to be straightaway dismissed from service because he was found guilty for committing offence involved in serious offence of breach of trust, misappropriation and moral turpitude by the competent criminal court and conviction was upheld even by this court in revision. In spite of that surprisingly the authority passed an order dated 6.3.1980 placing him under suspension and ordered to pay subsistence allowance of Rs.1.

#. It is interesting to note that right from 1980 till 1995 for a period of 15 years, the respondent-petitioner did not make any grievance before anyone, including the authority. For the first time on 20.1.1995 he addressed a letter (Annexure-C) to the District Primary Education Officer stating that as per the order of suspension dated 6.3.1980 he was placed under suspension and he was paid subsistence allowance of Rs.1 p.m. for the months April and May, 1980. Thus, he was paid only Rs.2 and

thereafter he got nothing. After stating this he has not made any prayer about the subsistence allowance. What was prayed by him in the letter dated 20.1.1995 was to allow him to withdraw the amount lying in the G.P.F. The said letter was replied on 28.2.1995 (Annexure-D) whereby he was informed to apply for withdrawal of G.P.F. amount in accordance with rules. Once again, he slept over the matter for a period of almost 2 years and for the first time i.e. on 29.1.1997 (Annexure-E) he wrote a letter to the authority posing a question that what they want to do regarding his payment of subsistence allowance of Rs.1 p.m. for the month of April and May, 1980, failing which he threatened the authority that he will have to serve them with legal notice through his lawyer.

##. On 3.3.1997 (Annexure-F) the authority asked the petitioner to produce the proof regarding relieving him from service. Instead of that registered notice dated 25.3.1997 (Annexure-G) was issued by the petitioner through his lawyer wherein it has been stated that his date of birth is 20.10.1939 and he is reaching the age of superannuation on 31.10.1997, therefore, he would be entitled to pensionary benefits for the period of 17 years. No departmental inquiry was made in the matter, therefore, he should be paid subsistence allowance during the suspension period. It seems that the said notice was not replied, therefore, he approached this court by way of Special Civil Application No.5031/97 in June, 1997.

##. We have already reproduced the prayers made by the petitioner in his writ petition. Out of two prayers, prayer regarding pension and other retirement benefits were given up by his counsel before the learned Single Judge and in fact the learned Single Judge had observed that otherwise also the prayer would have been declined because the petitioner was convicted and punished for the offence of misappropriation and criminal breach of trust and moral turpitude under Section 409 of IPC, therefore, he would not be entitled for any benefit under Article 226 of the Constitution of India. Thus, only one prayer viz. payment of subsistence allowance during the suspension period survive. The learned Single Judge, surprisingly, granted that prayer without considering the fact that the petitioner never challenged his suspension order and it was a belated challenge after a period of 17 years of passing of the order. As per the say of the petitioner himself he was paid subsistence allowance of Rs.1 p.m. in April and May, 1980 thereafter he was not paid a pie. In spite of it he had never made any grievance before any authority till 1995. In 1995 he made an application mainly for G.P.F. amount. The same

was replied in February, 1995, thereafter again for a period of almost 2 years he did not pay anything and for the first time on 29.1.1997 he wrote a letter to the authority regarding subsistence allowance.

##. In our considered opinion, a person, who is found guilty, convicted and sentenced by the Criminal Court and whose conviction is upheld by Appellate Court as well as this court has no right to continue in service. It is unfortunate that so far no order of dismissal from service is passed. Be that as it may. Certainly, such persons are not entitled for any subsistence allowance. In fact, learned Single Judge himself in his judgment observed that an employee, who has been convicted and punished for serious offence like misappropriation, criminal breach of trust and moral turpitude cannot be given discretionary relief under Article 226 of the Constitution of India. In spite of it, learned Single Judge granted the prayer regarding subsistence allowance, which appears to us from the order of the learned Single Judge that he was mainly annoyed with the attitude of the respondent authority in not filing reply on time. Be that as it may. Reply affidavit is already there on the record. In our considered opinion, it was not proper on the part of the learned Single Judge to discard the reply affidavit though might have been filed at a belated stage. From the reply affidavit it is clear that the petitioner was convicted for a serious offence under Section 409 of IPC and such a person cannot have any right to claim equity from this court. On the reasoning assigned by the learned Single Judge himself in his judgment when he refused to grant relief in his extra-ordinary jurisdiction under Article 227 of the Constitution of India, the prayer regarding subsistence allowance was required to be straightaway rejected. Unfortunately, it was granted by the learned Single Judge.

##. Thus, from the above, it is clear that the judgment of the learned Single Judge is contradiction in terms, therefore, we are of the considered opinion that the learned Single Judge could not have granted relief regarding payment of subsistence allowance.

##. In view of the above discussion, this appeal is allowed and the main judgment and order passed by the learned Single Judge allowing subsistence allowance to the respondent-petitioner is hereby quashed and set aside and the direction issued by the learned Single Judge to hold the inquiry against the officer is also quashed and set aside. Rest of the judgment and order passed by the

learned Single Judge dismissing the writ petition regarding G.P.F. and retirement benefits is confirmed. This appeal is allowed accordingly. However, there shall be no order as to costs.

##. No order on the Civil Application for stay as the main appeal itself is allowed.

(B.J.Shethna, J.)

(Ravi R. Tripathi, J.)

*Pvv